

Remarks

This Amendment and Request for Continued Examination is in light of the Final Office Action dated May 30, 2008, the Appeal Brief filed July 10, 2008, and the Examiner's Answer dated October 3, 2008.

In light of the amendments made during prosecution of the present application, Applicants assert that the instant claims dominate the claims presented in U.S. Patent No. 6,540,775 to Fischell et al., issued April 1, 2003. The present Application has a priority date earlier than that of the Fischell reference, and as such Fischell is not prior art to the present application.

New claims 57 – 65 have been added. No new matter has been added.

The following comments are presented in the same order and with headings and paragraph numbers corresponding to those set forth in the Office Action.

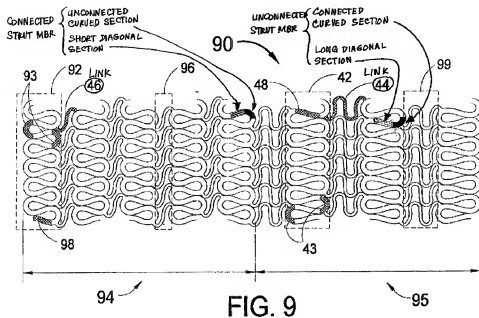
Claim Rejections—35 U.S.C. § 102

1. The Office rejected claims 38, 42, 43, and 45 under 35 U.S.C. § 102(e), alleging the same to be anticipated by U.S. Patent No. 6,190,403 to Fischell et al. (hereafter "Fischell").

Claim 38

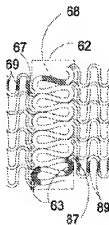
Fischell fails to teach or suggest all the elements of claim 38. Claim 38 recites, each interior circumferential set of strut members including at least one connected strut member consisting of a long diagonal section having a longitudinal length...each interior set of strut members also including at least one unconnected strut member consisting of a short diagonal section having a longitudinal length fixedly joined to an unconnected curved section. (Emphasis added)

The Office presented an *annotated* version of FIG. 9 of Fischll, presented immediately below:



As seen above, the Office has indicated that the short diagonal sections and the long diagonal sections are *not* in the same interior circumferential set of strut members 42. This is in contrast to the explicit language of claim 38 wherein each set of strut members includes both long diagonal sections and short diagonal sections.

In addition, Applicants assert that the interpretation provided by the Office with respect to the Fischell reference is *not* a reasonable one. With respect to FIG. 8, the Fischell reference refers to reference number 63 as “connected, curved end struts,” shown immediately below:



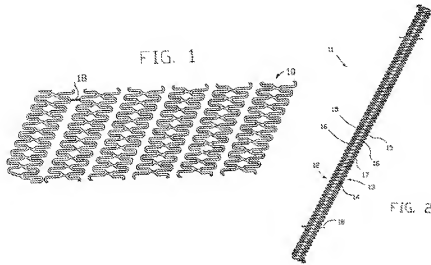
As seen above, the structure indicated by reference number 63 includes both the “connected curve section” and the “unconnected curved section” asserted by the Office to be shown in the annotated version of FIG. 9 shown above. Additionally, the structure indicated by reference number 43 in FIG. 9 is identical to the structure indicated at reference number 63 is FIG. 8. Applicants assert that it is *unreasonable* for the Office to take a structure such as the “connected, curved end struts” shown at 63 in Fischell and *dissect* it into a “connected curved section” and an “unconnected curved section” in an effort to read claim 38 onto Fischell.

Applicants assert that the Office’s interpretation must be *reasonable*—in light of the specification. Applicants’ own specification has not provided for such a dissection, and, neither has Fischell. Fischell, in contrast to what is asserted by the Office explicitly shows and states that the entire structure is a “connected, curved end strut.” Furthermore, a person of ordinary skill in the art would not interpret the structure the manner proposed by the Office. Therefore, the interpretation is *unreasonable*. Thus, for at least the reasons presented above, Fischell does not anticipate claim 38.

Claims 39, 42, 43, 45, and 46 incorporate all the subject matter of claim 38 and add additional subject matter, making them patentable as well over Fischell.

2. The Office rejected claims 38 and 39 under 35 U.S.C. § 102(e), alleging the same to be anticipated by U.S. Patent No. 5,810,872 to Kanesaka et al. (hereafter “Kanesaka”).

Kanesaka fails to teach or suggest all the elements of claim 38. Specifically, Kanesaka fails to teach or suggest at least the limitation of “a multiplicity of interior circumferential sets of strut members,” as recited in claim 38. FIGs. 1 and 2 of Kanesaka are reproduced immediately below:



Kanesaka states, “The stent 10 is formed of a diagonally arranged strip 11 as shown in FIG. 2, which is wound spirally in a cylindrical shape.” (Emphasis added)(col. 3, lines 50 – 52). And, “The strip 11 includes two tortuous members 12, 13 connected by connecting members or joint struts 14.” (col. 3, lines 52– 54). And, “each tortuous member extends continuously and diagonally in a waving form.” (col. 3, lines 57– 58).

Based on the above-quoted language from Kanesaka, there is no “multiplicity of interior circumferential sets of strut members,” as recited in claim 38, because there is only a single set of strut members rather than a multiplicity of sets of strut members. There is only a single set of strut members in Kanesaka because the stent 10 is made from a single strip 11 made up of two tortuous members 12, 13 which is wound to form a cylindrical shape.

Furthermore, the strip is arranged *spirally* and is therefore *not circumferential*. A person of ordinary skill in the art would not construe a spirally wound strip to be circumferential, in contrast to instant claim 38.

The Office asserts that despite the fact that the Kanesaka stent is formed from a strip of material, it does show a “multiplicity of interior circumferential sets of strut members and one end circumferential set of strut members at each of the two longitudinal ends of the stent,” as in claim 1. (Examiner’s Answer, page 7.) However, the only way that the Office can justify such an argument is by ignoring the fact that the stent is a cylinder and instead focusing only on the depiction in FIG. 1 of a side view of the stent of Kanesaka extended in a flat form. When the stent is actually formed into a cylindrical shape using the strip 11 shown in FIG. 2, it would be

clear that there would not be a “multiplicity of interior circumferential sets of strut members and one end circumferential set of strut members at each of the two longitudinal ends of the stent,” as in claim 1. As such, Kanesaka does not teach or suggest all the elements of claim 38.

Claim 39 incorporates all the limitations of claim 38 and adds additional limitations making it patentable as well over Kanesaka. As such, claims 38 and 39 are not anticipated by Kanesaka. Applicants traverse the rejection and request its removal.

Claim Rejections—35 U.S.C. § 103

The Office rejected claim 46 under 35 U.S.C. § 103, alleging the same to be unpatentable over Fischell in view of U.S. Patent No. 5,800,526 to Anderson et al. (hereafter “Anderson”).

The purported combination of Fischell and Anderson fails to teach or suggest all the limitations of claim 46. As argued above, Fischell fails to teach or suggest all the elements of claim 38, from which claim 46 depends. The addition of any alleged disclosure in Anderson of tantalum, as in claim 46, does nothing to address the lack of disclosure in Fischell. As such, claim 46 is non-obvious. Applicants request that the rejection be withdrawn.

New Claims 58 – 65

New claims 58 – 65 are also patentable over Fischell. Fischell fails to teach or suggest at least the following element of claim 58: “a plurality of undulating band-like elements, each band-like element having alternating peaks and troughs aligned on a common longitudinal axis to define a generally tubular stent body...wherein the peaks have an amplitude, the peaks of each band-like element comprising a first amplitude and a second amplitude, the first amplitude being less than the second amplitude.” (Emphasis added.) As seen in Fischell, all of the peaks on a band have substantially the same amplitude in contrast to claim 58. As such, new claims 58 – 65 are patentable over Fischell.

Conclusion

In light of the above arguments, Applicants submit that the application, with pending claims 38 – 39, 42 – 43, 45 – 46 and 57 – 65, is in condition for allowance. Early action to that effect is solicited earnestly.

Should the Examiner have any questions regarding the above amendment, the Examiner is invited to contact the Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: October 30, 2008

By: / James L. Shands /
James L. Shands
Registration No.: 54439

6640 Shady Oak Dr., Suite 400
Eden Prairie, MN 55344-7834
Telephone: (952) 563-3000
Facsimile: (952) 563-3001